

EXHIBIT 3

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 * * *

4 NORTH AMERICAN COMMUNICATIONS,)
5 INC., Plaintiff,)

6 vs.)

7 MICHAEL HERMAN,)

8 Defendant and)
9 Counterclaim-Plaintiff)

10 vs.)

11 NORTH AMERICAN)
12 COMMUNICATIONS, INC.,)
13 ROBERT HERMAN and)
14 NICHOLAS ROBINSON,)

15 Counterclaim-Defendants.)

NO. 3:17-CV-157

16 * * *

17 DEPOSITION OF EMANUEL ORTIZ

18 * * *

19 FRIDAY, NOVEMBER 9, 2018

20 * * *

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1 Q. And did you have the opportunity to
2 review these documents before they were --

3 A. I recall having a discussion about them.

4 Q. And did you work -- they're from Attorney
5 Ed Borden; is that correct?

6 A. Correct.

7 Q. And did IFM and Logan Marketing retain
8 Attorney Borden to represent IFM and Logan in these
9 proceedings?

10 A. IFM.

11 MR. BERARDINELLI: Stephanie, you should
12 ask -- I forgot to reserve our -- reserve all
13 objections except as to form.

14 MS. DIVITTORE: I'm sorry. I forgot.
15 Agreed.

16 MR. BERARDINELLI: No, I typically do it,
17 so you didn't forget, I just...

18 Q. So Attorney Borden represents IFM with
19 respect to the subpoena?

20 A. Correct.

21 Q. If you look at the response in Exhibit 3,
22 No. 3 -- sorry -- Exhibit 4. I apologize.

23 MR. BERARDINELLI: The Logan one?

24 MS. DIVITTORE: Yes. I apologize, I'm
25 not organized.

14

1 Q. Exhibit 4, document request one asks for
2 a list of owners, officers and employees of Logan
3 Marketing Group, LLC. Do you see that?

4 MR. BORDEN: On page 3. The 1s and 2s
5 and 3s.

6 A. I see it.

7 Q. And the response, the last sentence
8 indicates that Maria Herman, Michael Herman's
9 spouse, owned a 25.4 percent interest in nonparty
10 defined as Logan Marketing; is that right?

11 A. That's correct.

12 Q. Did you provide that information to
13 Attorney Borden?

14 A. Either myself or our accountant.

15 Q. Do you know who the other 74.6 percent
16 owners of Logan Marketing are?

17 A. I do.

18 MR. BORDEN: Objection. Logan Marketing
19 -- read the pleadings, Logan's not a party to this
20 case as we objected here. We continue to object.
21 And I can tell you that Mr. Ortiz is not going to
22 answer questions about ownership except to -- except
23 as far as in this answer.

24 MR. BERARDINELLI: And I will -- I'll
25 join in that objection, but I will stipulate -- if

1 MR. BERARDINELLI: I will stipulate to
2 that as well. I can't speak for why Mr. Borden
3 listed the 25.4.

4 MR. BORDEN: I'll just note the obvious
5 thing, and that is that, in fact, that neither
6 Mr. Herman nor IFM holds any interest in Logan is
7 also part of the answer.

8 MS. DIVITTORE: Not certain why you are
9 putting facts of record; I understand we had an
10 objection, but I don't know that that's appropriate.

11 MR. BORDEN: Well, Mr. Berardinelli
12 proffered a stipulation as to certain things, and
13 I'm just noting that Mr. Herman -- or excuse me --
14 Mr. Ortiz and Logan have already stated that neither
15 Mr. Herman nor IFM hold any ownership interest in
16 Logan.

17 BY MS. DIVITTORE:

18 Q. Mr. Ortiz, if you'd look at document
19 No. 3, which is the objections and responses from
20 your counsel to the IFM subpoena, go to page 3.
21 Question 4 asks for "any and all payroll or other
22 financial records for IFM.US, LLC, which list or
23 indicate payments to Michael Herman." Do you see
24 that?

25 A. Correct. I see it.

1 Q. And it indicates "responsive documents
2 will be produced." Do you see that?

3 A. Okay. I see it.

4 Q. Do you know whether documents were
5 produced that indicate payments to Mr. Herman?

6 A. I don't believe there were any documents.

7 Q. So IFM made no payments to Mr. Herman?

8 A. Mike -- IFM has made no payments to
9 Michael Herman, other than the \$25,000 check that
10 you are quite aware of.

11 Q. Which \$25,000 check?

12 A. It's part of the information that was
13 provided. We reimbursed Mike for his travel in the
14 beginning. You have records of that, I'm sure of
15 that.

16 * * *

17 (MO Deposition Exhibit 5 was marked for
18 identification.)

19 * * *

20 Q. I'll show you what we've marked as
21 Exhibit 5.

22 A. Okay.

23 Q. Do you recognize this document?

24 A. Yeah. I'm familiar with this document.

25 Q. And did you draft this?

1 A. IF Mail.

2 * * *

3 (MO Deposition Exhibit 6 was marked for
4 identification.)

5 * * *

6 MS. DIVITTORE: Can we go off the record?

7 * * *

8 (Whereupon, an off-the-record discussion was held.)

9 * * *

10 THE WITNESS: You know what, now I need
11 my glasses.

12 MR. BERARDINELLI: Is that 6?

13 BY MS. DIVITTORE:

14 Q. Show you what we've marked as MO
15 Exhibit 6.

16 MR. BERARDINELLI: Give us one second,
17 Steph, please.

18 MS. DIVITTORE: Sure.

19 A. Okay.

20 Q. Do you recognize that as an e-mail
21 exchange that involves you, Mr. Herman, and Susan
22 Bender?

23 A. I do. I don't recall it, but I do.

24 Q. It was November 28, 2016, the top date.

25 A. Okay.

1 Q. Is that correct?

2 A. It says so.

3 Q. And it attaches an e-mail from Mrs.

4 Bender?

5 A. Okay. Is that the attachment?

6 Q. Yes.

7 A. Okay.

8 Q. Is that correct?

9 A. That's what I'm reading.

10 Q. And you would agree with me that Susan

11 Bender is an employee of North American?

12 A. Correct.

13 Q. And this is discussing the information
14 necessary to form IF-Mail.com, LLC; is that right?

15 A. Correct.

16 Q. Is that the original name of the
17 business?

18 A. That was the original name.

19 Q. And you were working with Mr. Herman
20 about how to form this company?

21 A. That's correct.

22 Q. And you indicated that Mrs. Ortiz was and
23 is the only owner of IFM?

24 A. Correct.

25 * * *

1 Jersey.

2 Q. So when the -- when these documents were
3 filed in March of 2017, did Patrick Donahue have any
4 ownership interest or was an officer or director of
5 IFM?

6 A. Patrick Donahue was an employee of IFM.

7 Q. What about David Halprin?

8 A. David Halprin is an attorney for IFM.

9 Q. And then Logan Marketing Group?

10 A. That is incorrect. Logan has nothing to
11 do with IFM.

12 Q. So let's turn back to IFM. Would you
13 agree with me that your discussions with Mr. Herman
14 about the business began sometime in 2016?

15 A. Sometime in 2016.

16 Q. Can you tell us about that?

17 A. That's a long story, and I think your
18 client can probably better explain it because it all
19 starts with the introduction of Rob to Mike about a
20 piece of technology that we acquired. So what time
21 frame was that? July, August?

22 Q. How did it come out? Come about?

23 A. Rob introduced --

24 MR. BORDEN: What's the question?

25 Q. How did it come about? How did you

1 become involved? How did you learn about the
2 machine?

3 A. Rob introduced Mike to Pat Donahue. Mike
4 called me, said there's a unique piece of
5 technology, let's go look at it. We went to look at
6 it. Rob backed out of participating in the purchase
7 of the technology. We decided to go forward. We
8 purchased it. We decided to create a business for
9 the technology. And that's the long and short of
10 it.

11 Q. And can you explain the machine or the
12 technology, what it does and how it's new
13 technology?

14 A. It's a piece of equipment that was
15 designed by Pat Donahue that does -- that -- it
16 replicates what an in-line package would be created
17 on a continuous web press. It replicates it in a --
18 a match-inserting piece of technology. You'll take
19 a form, you create a pre-assembly, you run it
20 through the machine, it keeps everything in order,
21 allows you to do match mail so it's Stephanie,
22 Stephanie, Stephanie. Okay? It also allows you to
23 do selective inserting; so you might get a, you
24 know, an insurance piece and Tera might get a health
25 care piece. It affixes cards. It inserts at high

1 speeds. It has an inkjet capability in the back end
2 to spray information on the envelope. So it's what
3 traditionally has been two or three different pieces
4 of equipment all rolled into one.

5 Q. So when you, for example, were engaged in
6 direct mail services with Princeton Fulfillment,
7 this equipment is just newer technology that does
8 more?

9 A. It's technology that does what three or
10 four different pieces of machine equipment would do
11 with separate people running them, all in one
12 complete unit.

13 Q. Did Mr. Donahue build the equipment or
14 machine?

15 A. Mr. Donahue helped design the machine.
16 It was built by a company, another company.

17 Q. And at the time you were looking into
18 purchasing this equipment, was it in use?

19 A. It was not in use.

20 Q. Had it been tested, do you know; was it
21 working?

22 A. It --

23 MR. BORDEN: Now, would you just read
24 that question back? I thought there were two
25 questions in there.

1 * * *

2 (Whereupon, reporter read pending question.)

3 * * *

4 MR. BORDEN: Okay. Go ahead.

5 A. Wasn't working. And both times we went
6 to visit the machine, they couldn't get it to work.

7 Q. But you and Mr. Herman were working with
8 Mr. Donahue to proceed with acquiring this
9 equipment?

10 A. We were working to determine whether
11 there was a viable marketplace for the technology.

12 Q. And what was Mr. Donahue's role other
13 than designing the equipment?

14 A. He was the resident expert on the
15 equipment since he helped design it and had a sales
16 role to play.

17 Q. And at some point in 2016 you decided to
18 move forward?

19 A. Correct.

20 Q. And how -- if you can explain, what you
21 and Mr. Herman agreed, who -- or whether there were
22 others involved?

23 MR. BERARDINELLI: Object to the form.
24 You can answer.

25 MR. BORDEN: Do you understand the

1 question?

2 MS. DIVITTORE: I can rephrase it,
3 actually, because I didn't ask it well.

4 Q. In the fall of 2016 you decided to move
5 forward and form this business to acquire the
6 machine, correct?

7 A. Correct.

8 Q. Who was involved with that decision?

9 A. Myself, Pat, we consulted with Mike.
10 That was it.

11 Q. Can you explain what the business model
12 was going to look like?

13 A. The business model was to do a more
14 sophisticated mail piece, a match mail piece with
15 all the capabilities the machine had, at high
16 volume; not to do traditional direct mail like your
17 client performs. This is a different type of direct
18 mail. And that was what the business was -- was
19 supposedly to be about.

20 * * *

21 (MO Deposition Exhibit 8 was marked for
22 identification.)

23 * * *

24 MS. DIVITTORE: Show you what we've
25 marked as Exhibit 8.

1 MR. BORDEN: Is this for David?

2 MS. DIVITTORE: Yes. Apologize.

3 Q. Mr. Ortiz, do you recognize Exhibit 8 as
4 a series of e-mail between Mr. Herman, Mr. Donahue
5 and yourself?

6 A. I recall them.

7 Q. And the subject line is "our business";
8 is that correct?

9 A. That's what it says.

10 Q. So you wrote to Mr. Herman on
11 November 25, 2016, concerning "our business," right?

12 A. Correct.

13 Q. And on page IFM-5 of this exhibit it
14 talks about a meeting at -- is it ANRO, A-N-R-O, and
15 date for the demo at Fry; is that right?

16 A. Correct.

17 Q. What is Fry?

18 A. Fry was the owner of the machine.

19 Q. Was Mr. Donahue an employee of Fry?

20 A. In the past.

21 Q. So he worked at Fry and was designing --

22 A. He worked at Fry, he helped design the
23 machine, Fry had it built. They couldn't run it.
24 It sat with a tarp over it.

25 Q. And what is ANRO?

1 A. ANRO is a direct marketing company in
2 West Chester, Pennsylvania.

3 Q. What does the direct marketing company
4 do?

5 A. Exactly what your client does.

6 Q. So there's no difference between direct
7 mail and direct marketing?

8 A. Define -- ANRO has significantly more
9 products and services than your client, so it makes
10 them a direct marketing company while your client is
11 a direct mail company.

12 Q. What other services or products does ANRO
13 have that differentiates it from North American?

14 A. Too long a list to go through.
15 seriously, too long a list.

16 Q. Give me some examples of different --

17 A. They have --

18 Q. Please let me finish my question.

19 MR. BERARDINELLI: Let her finish.

20 A. They have wide-format printing. They
21 have unique bindery capabilities. They have two
22 dozen forms of digital printing capability. They
23 have a true fulfillment business. They have a
24 creative agency. They have a production services
25 agency. Is that enough examples?

1 Q. What is wide format printing?

2 A. It's like when you walk into a store and
3 you see a big banner. That's wide format printing.

4 Q. And what do you mean by true fulfillment?

5 A. Real -- E-commerce, Pick Pack, shipping,
6 logistics.

7 Q. And in this string of e-mails on
8 November 17, 2016, Michael Herman wrote to Mr.
9 Donahue, "It is time for us to come to an agreement
10 incorporating all the aspects, our company, patents
11 and operating and partnership agreement so that all
12 feel comfortable."

13 Do you see that?

14 A. Uh-huh.

15 Q. What is Mr. Herman's role at this point,
16 and why is he negotiating the agreement for Mr.
17 Donahue?

18 MR. BERARDINELLI: Object to the form.

19 MR. BORDEN: Objection; misstates the
20 contents of the document.

21 Q. Okay. You may answer.

22 A. He was consulting.

23 Q. At this point was IFM formed as a
24 corporation or an LLC?

25 A. I don't remember the exact date IFM was

1 formed, but it was formed sometime late '16.

2 Q. And am I correct that there was an issue
3 with a patent?

4 A. There was a patent that's been issued for
5 the technology. So I don't understand what you mean
6 there's an issue with the patent.

7 Q. At the time you were looking to purchase
8 the machine, was there a patent for the machine?

9 A. No.

10 Q. When was a patent issued for the machine?

11 A. Sometime in 2017.

12 Q. Was that issued to IFM?

13 A. I think the patent is in the name of Pat
14 Donahue owned by IFM.

15 Q. Do you know the terms of Mr. Donahue's
16 employment with IFM?

17 A. Correct, yeah, I do.

18 Q. What were they?

19 A. He was given a salary, he was given ten
20 percent of the company with an ability to grow to 20
21 percent if he hit a certain target in sales. And
22 that did not occur.

23 Q. What do you mean by "he was given ten
24 percent of the company"?

25 A. We made him a ten-percent partner, okay,

1 in IFM.

2 Q. As a member of the LLC?

3 A. No, not as a member. The company's owned
4 by my wife. Okay. But he had ten percent. So if
5 there was ever a transaction, an event with the
6 company, he would have gotten ten percent.

7 Q. Is there any type of written agreement
8 that memorializes this?

9 A. I believe there's an employment contract
10 with Pat.

11 Q. Did he receive a sign-on bonus?

12 A. I think he got an advance of 20 or
13 \$25,000.

14 * * *

15 (MO Deposition Exhibit 9 was marked for
16 identification.)

17 * * *

18 Q. Show you what we have marked as
19 Exhibit 9.

20 Do you recognize this as a November 26,
21 2016, e-mail correspondence between you and Mr.
22 Herman?

23 A. I do.

24 Q. And this also concerns the formation of
25 IFM?

1 A. I believe it discusses some of the
2 capital needed for the business.

3 Q. And what was the capital at this point
4 that you thought you needed for the business?

5 A. As I'm reading this thing, a few hundred
6 thousand dollars.

7 Q. Could you tell me the breakdown?

8 MR. BERARDINELLI: Object to form;
9 document speaks for itself.

10 MR. BORDEN: Yeah. Do you want him to
11 read it?

12 MS. DIVITTORE: I want him to tell me
13 what funds for what specific items he believed was
14 necessary.

15 A. He says here about a quarter million
16 dollars, maybe a hundred grand less if ANRO did some
17 of the printing, and then some legal dollars.
18 That's what it says.

19 Q. And can you explain how this would work
20 with the machine, your new business and ANRO?

21 A. To run the machine you need to have the
22 stuff printed digitally up front. ANRO has digital
23 printing equipment. So we were looking to them to
24 provide the digital printing up front so we can do
25 the rest with the machine.

E. Ortiz - by Ms. DiVittore

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1 Q. what would ANRO actually print?

2 A. Something like this.

3 Q. Okay.

4 A. In many, many tens of thousands of
5 pieces.

6 MR. BERARDINELLI: Just so record's
7 clear, Mr. Ortiz held up Exhibit 8 when he said
8 something like this.

9 MR. BORDEN: Actually, nine.

10 MR. BERARDINELLI: Nine. Thank you.

11 MR. BORDEN: Nine.

12 Q. So they would bring you the printed
13 documents and then what would you do?

14 A. It would be on a web roll, print the
15 documents, would be as little as, I don't know, a
16 few thousand names to a few million, and then the
17 machine would do the rest. Fold it, match it,
18 multiple components, insert it.

19 Q. And when it came out at the end of the
20 machine, would it be in an envelope?

21 A. It would be in an envelope.

22 Q. And Mr. Herman in that e-mail chain says,
23 "Sue was sent instructions to LLC it in Delaware."

24 Do you know what that references?

25 A. I think at the time we had a discussion

1 about making IFM a Delaware entity, and we did not
2 proceed forward with that. And it's a New Jersey
3 entity.

4 Q. And Sue was Mrs. Bender?

5 A. I believe that's correct.

6 Q. Do you know why Sue would be performing
7 -- or why Sue would receive the instructions to LLC
8 the company?

9 A. I have no idea why.

10 Q. Did you ever discuss that with Mr.
11 Herman?

12 A. No idea why.

13 Q. And it says, "Doug has the funds in place
14 for the purchase."

15 Do you see that?

16 A. That is correct.

17 Q. Is that Doug Holthaus?

18 A. That is Doug Holthaus.

19 Q. Can you explain Mr. Holthaus's role; was
20 he providing the funding for the formation of the
21 company?

22 A. Doug Holthaus arranged for capital for
23 IFM.

24 Q. How did he arrange for capital?

25 A. He went to the market and got us a

1 partner to fund the business startup of IFM.

2 Q. And who was that partner?

3 A. A company called Sofitel.

4 Q. When did you become aware of Sofitel?

5 A. Back when Doug arranged for the
6 financing.

7 Q. And that was in this November 2016 time
8 frame?

9 A. Sometime late '16.

10 Q. And prior to that time you had never
11 heard of Sofitel?

12 A. Never in my wildest dreams.

13 Q. At the time that Mr. Holthaus was
14 securing this funding, was there any type of
15 agreement in place?

16 A. There was discussions about the agreement
17 with Sofitel.

18 Q. Tell me about those discussions.

19 A. It was basically a royalty agreement.
20 Sofitel would be paid a royalty based on units
21 produced through the machine.

22 Q. How much funding was Sofitel going to
23 provide?

24 A. Um, there wasn't a number.

25 Q. So you had unlimited funds available to

1 you?

2 A. Well, let's just say there wasn't, like,
3 a hundred thousand or ten million. It was no set
4 number.

5 Q. Was there any security pledged for these
6 funds?

7 A. There was a royalty agreement.

8 Q. Do you have a copy of the royalty
9 agreement?

10 A. No, I don't.

11 Q. Were you -- did you ever sign a royalty
12 agreement?

13 A. No, because -- you'll have to ask Doug.

14 Q. I'm asking you.

15 A. You'll have to ask Doug.

16 Q. Please let me finish my question. I'm
17 asking you as the officer of IFM whether you ever
18 signed a royalty agreement with Sofitel.

19 A. My answer is no.

20 Q. Do you know whether your wife, as the
21 only owner of IFM, signed a royalty agreement with
22 Sofitel?

23 A. The answer is no.

24 Q. And you would agree with me that Attorney
25 Holthaus passed away?

1 A. I believe so.

2 Q. Do you have any e-mail correspondence
3 concerning this royalty agreement?

4 A. With Doug Holthaus, yes.

5 MS. DIVITTORE: I'd ask why that hasn't
6 been produced.

7 MR. BORDEN: We will be happy to look
8 again, but we made -- I can tell you we made a
9 thorough and diligent search of all the e-mail
10 traffic from a number of different sources, and if
11 it wasn't there, it wasn't there.

12 MR. BERARDINELLI: Also, sounds a lot
13 like an attorney-client communication to me.

14 Q. So it's your position that Attorney
15 Holthaus represented IFM?

16 A. Correct. I said that at the beginning.

17 Q. Do you have a fee agreement or a retainer
18 agreement with Mr. Holthaus?

19 A. I don't recall.

20 Q. Are you aware that Mr. Holthaus is
21 connected with Sofitel?

22 MR. BERARDINELLI: Object to the form.

23 A. Explain.

24 Q. Are you aware whether Mr. Holthaus has
25 any type of connection to Sofitel?

1 A. Not aware --

2 MR. BORDEN: Let me just caution you that
3 if the only way you know the answer to that is
4 something that Mr. Holthaus told you, then you
5 should not answer that question. If you know it
6 independently...

7 A. I don't know. Simple.

8 MR. BORDEN: Fine.

9 Q. Did you speak with Mr. Herman about
10 Sofitel?

11 A. Mr. Herman referred me to Mr. Holthaus.

12 Q. Was that in the fall of 2016?

13 A. Some point in 2016.

14 Q. What did Mr. Herman tell you about
15 Sofitel?

16 A. Nothing.

17 Q. And it's your position that Attorney
18 Holthaus actually provided legal services for IFM?

19 A. Correct.

20 Q. But you don't know whether you have a fee
21 or a retainer agreement?

22 A. I don't know.

23 Q. Do you know whether you paid Attorney
24 Holthaus for legal services?

25 A. I believe so, but I don't recall when.

E. Ortiz - by Ms. Divittore

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1 MS. DIVITTORE: I would ask -- of course,
2 I'm not entitled to any privileged communication,
3 but I would ask for redacted billing to demonstrate
4 that Attorney Holthaus provided legal services.

5 MR. BORDEN: We'll certainly take that
6 under advisement. I'd just ask that -- so that, you
7 know, everything's clear, that you send us a
8 confirming letter after the deposition.

9 MS. DIVITTORE: Sure. I'm making a list
10 for what I've asked for.

11 MR. BORDEN: And we'll respond to it
12 promptly.

13 Q. Okay. Were there any other companies or
14 individuals that invested or provided funding for
15 IFM?

16 A. No.

17 Q. Did Mr. Herman provide any funds for the
18 formation or operation of IFM?

19 MR. BERARDINELLI: Object; compound.

20 Q. Did Mr. Herman provide any funds to form
21 IFM?

22 A. No.

23 Q. Did Mr. Herman personally provide any
24 funds for IFM operations?

25 A. Other than the \$15,000 loan that he gave

E. Ortiz - by Ms. DiVittore

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1 me that we paid back, no. You have record of that.

2 Q. Are you familiar with the company

3 Chiefeast, LLC?

4 A. No.

5 Q. Bear Air?

6 A. No.

7 Q. National Marketing Development

8 Corporation?

9 A. No.

10 Q. Bariloche, B-A-R-I-L-O-C-H-E, Adventura,

11 A-D-V-E-N-T-U-R-A?

12 A. No.

13 Q. 3402 Holding Corporation?

14 A. No.

15 Q. Wye, W-Y-E, Switches?

16 A. No.

17 Q. Berthaphil, B-E-R-T-H-A-P-H-I-L?

18 A. Yes.

19 Q. What do you know about Berthaphil?

20 A. I believe that's Mike's business in the

21 Philippines.

22 Q. Did Berthaphil provide any funding?

23 A. None.

24 MR. BORDEN: Any funding for what?

25 MS. DIVITTORE: IFM.

E. Ortiz - by Ms. DiVittore

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1 MR. BORDEN: Okay.

2 MR. BERARDINELLI: Stephanie, if you're
3 at a good point, can we take a quick restroom break?

4 MS. DIVITTORE: Sure.

5 MR. BERARDINELLI: Not immediately if
6 you're on a flow.

7 MS. DIVITTORE: No. I mean, it's up to
8 you.

9 MR. BERARDINELLI: All right. Let's go.

10 * * *

11 (Whereupon, a brief recess was taken.)

12 * * *

13 MR. BORDEN: Mr. DiVittore, I apologize for
14 interrupting, but I just want to assist. I think
15 Mr. Ortiz, when he answered the questions about the
16 list of companies, he understood you to be asking
17 whether he had any knowledge about the substantive
18 operations of those companies, not whether he had
19 ever heard of them. So you -- all I'm suggesting is
20 you may want to further that examination a little
21 bit. I think he has some knowledge that he's
22 certainly prepared to testify about.

23 BY MS. DIVITTORE:

24 Q. What, Mr. Ortiz, is your knowledge of the
25 company National Marketing Development Corporation?

E. Ortiz - by Ms. DiVittore

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1 A. Frankly, nothing. And I can just make it
2 simple for you for the list. I've heard the names
3 because of the lawsuit, but I know nothing about the
4 companies themselves. And that's how I interpreted
5 your question.

6 Q. You've been friends with Mr. Herman for
7 quite some time.

8 A. Correct.

9 Q. You're not aware of Bear Air or Chiefeast
10 companies affiliated with his airplane?

11 A. I've heard the names because of the
12 lawsuit. I know no details about any of the
13 entities. It's not my business.

14 Q. I don't want you to tell me anything that
15 might be privileged, but did you, personally, speak
16 with Doug Holthaus in the fall of 2016 about forming
17 this business?

18 A. Which business?

19 Q. IFM.

20 MR. BORDEN: So if it was a conversation
21 solely between you and Holthaus about a matter
22 relating to his legal representation to you --

23 MS. DIVITTORE: I'm going to object to
24 that.

25 MR. BORDEN: -- you shouldn't testify to

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1 it.

2 MS. DIVITTORE: My question was excluding
3 any privileged information, did you, personally,
4 speak with Mr. Holthaus during the fall of 2016.

5 MR. BORDEN: Okay. Not everybody in this
6 room or in the world knows the exact parameters of
7 the attorney-client relationship.

8 THE WITNESS: What is it with this chair?

9 MR. BERARDINELLI: You hit it with your
10 calf.

11 THE WITNESS: I mean, I know I weigh a
12 little bit...

13 * * *

14 (Whereupon, an off-the-record discussion was held.)

15 * * *

16 MR. BORDEN: Okay. So what I was saying
17 is --

18 MS. DIVITTORE: It's a yes or no
19 question, Attorney Borden. Don't tell me what was
20 said, tell me whether you, personally, spoke with
21 Attorney Holthaus in the fall of 2016.

22 MR. BORDEN: Did he speak with him; is
23 that the only question? Okay. You can answer that.

24 A. Yes.

25 BY MS. DIVITTORE:

1 Q. Did Mr. Herman participate in those
2 conversations?

3 A. No.

4 Q. Approximately how many times did you
5 speak with Mr. Holthaus?

6 A. Can't recall.

7 Q. One to two, 10 to 20. Give me an
8 estimate.

9 A. Can't recall.

10 Q. Was it always by telephone?

11 A. Always by telephone.

12 Q. Did you meet with Attorney Holthaus?

13 A. Yes. I can't recall the date.

14 Q. Do you know where you met him?

15 A. San Diego.

16 Q. And that was where his office was based?

17 A. Correct.

18 Q. Did you meet at his office?

19 A. At his house office.

20 Q. Was there anyone else present?

21 A. His paralegal.

22 Q. What about Mr. Herman?

23 A. Mr. Herman was in San Diego. I don't
24 remember him being at the meeting.

25 Q. Do you know when that meeting occurred?

1 A. Late in '16, if I recall correctly.

2 Q. And that was, again without telling me
3 what you discussed, but it was for the purpose of
4 talking about IFM?

5 A. Correct.

6 * * *

7 (MO Deposition Exhibit 10 was marked for
8 identification.)

9 * * *

10 Q. Show you what we've marked as Exhibit 10.
11 Do you agree that this is a December 4th e-mail
12 exchange between you and Mr. Herman concerning IFM?

13 A. Correct.

14 Q. Mr. Herman is telling you, and I quote,
15 "Stay on Doug's ass and keep expressing our need to
16 be able to negotiate with ANRO."

17 Do you see that?

18 A. Correct, I see it.

19 Q. Can you tell me what that means?

20 A. If you recall my prior testimony about
21 ANRO doing the printing for us, that's what it
22 refers to.

23 Q. What do you mean by -- what does he mean
24 by "Stay on Doug's ass"?

25 A. To get the paperwork done.

1 Q. With whom?

2 A. The whom, that I can't answer.

3 Q. So you don't know what you were supposed
4 to be contacting Attorney Holthaus about?

5 A. I believe it had to do with the paperwork
6 concerning IFM; but who, I don't recall who Doug was
7 doing it with.

8 Q. Did IFM enter into any type of agreement
9 with ANRO?

10 A. No. Never got there.

11 Q. You indicated that the goal was to enter
12 into an agreement with ANRO to provide the actual
13 digital print.

14 A. Uh-huh.

15 Q. Yes?

16 A. Correct. Yes.

17 Q. And then your company would use the
18 technology to complete it?

19 A. Correct.

20 Q. What happened with ANRO that you didn't
21 negotiate an agreement?

22 A. ANRO could not finalize any kind of
23 agreement with us. They just couldn't get it done.

24 Q. Did you need them to be able to operate?

25 A. We needed a printing source.

1 Q. And IFM was formed and purchased the
2 equipment, correct?

3 A. Correct.

4 Q. Did IFM have a bank account?

5 A. It does. Or it did.

6 Q. With which bank?

7 MR. BORDEN: Just to be clear, when are
8 we talking about here? What time frame?

9 MS. DIVITTORE: Ever.

10 Q. Did IFM ever have a bank account?

11 MR. BORDEN: Okay.

12 A. Yes, it does.

13 Q. Did it have one or more accounts?

14 A. One.

15 Q. And was that account with Bank of
16 America?

17 A. It is -- or was.

18 * * *

19 (MO Deposition Exhibit 11 was marked for
20 identification.)

21 * * *

22 THE WITNESS: Ed, can I ask a question?

23 MR. BORDEN: Let's see what she asks.

24 See what her question is.

25 Q. Mr. Ortiz, I'll represent to you that

1 Q. In order for the machine to be
2 successful, did you need other equipment?

3 A. We needed an inkjet.

4 Q. Can you describe for those of us not in
5 the business what an inkjet is?

6 A. Does the printing; mostly for a name and
7 address on an envelope.

8 Q. Did it also print the digital?

9 A. No.

10 Q. Did you purchase -- did IFM purchase an
11 inkjet?

12 A. No, we rented one for a period of time.

13 Q. What was the direct fulfillment portion
14 of IFM?

15 A. Putting stuff in a box, shipping it out
16 for customers.

17 Q. Were there offices in the building?

18 A. There were offices in the building.

19 Q. Did IFM purchase office furniture,
20 computers, things of that nature?

21 A. It did.

22 Q. And who had offices at IFM space in
23 Lumberton, New Jersey?

24 A. Myself and Stephanie.

25 Q. And that's Stephanie Ortiz, your

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1 daughter-in-law?

2 A. Correct.

3 Q. How about Mr. Herman?

4 A. Had no office.

5 Q. Did he visit the facility?

6 A. Once or twice.

7 Q. Back to Exhibit 11. Page 66 indicates
8 that on May 3rd and May 26th Sofitel wired IFM
9 \$50,000 both.

10 A. Okay.

11 Q. Is that correct to your recollection?

12 A. Correct.

13 Q. Page 60 indicates a \$50,000 wire to IFM
14 on June 27th. Do you believe that's correct?

15 A. I'm sure it is.

16 Q. Page 56, \$35,000 wire to IFM on July 18th
17 of 2017?

18 MR. BERARDINELLI: 56? I'm sorry, I
19 missed the page.

20 MS. DIVITTORE: Yes.

21 A. Correct.

22 Q. And on page 54, a \$40,000 wire to IFM on
23 August 28th?

24 A. Correct.

25 Q. Page 48, September 2017, there was a

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1 the source of the funds?

2 Q. Do you know where Sofitel Investments,
3 Inc. was getting the money to wire to IFM?

4 A. Have no idea.

5 Q. Are you familiar with a person named
6 Tracy Forrest, F-O-R-R-E-S-T?

7 A. No.

8 Q. Are you familiar with the Hoover Legacy
9 Foundation?

10 A. I've heard Mike talk about it.

11 Q. Do you know what it is?

12 A. No, I don't know specifically what it is.

13 Q. Did IF Mail provide any funds to the
14 Hoover Legacy Foundation?

15 A. Directly?

16 Q. Yes.

17 A. Not that I know of.

18 Q. Did you have any discussions with Sue
19 Bender, to your knowledge, about the Hoover Legacy
20 Foundation?

21 A. If you're referring to the \$25,000
22 reimbursement from Mike's expenses, that I think
23 Mike sent it off to the foundation, that's about the
24 only thing I know. And I think -- if I recall
25 correctly, I think that's what he instructed Sue to

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1 do with the money that we paid him for the use of
2 the airplane.

3 Q. So it's your contention that IFM at some
4 point paid Mr. Herman for using the airplane that
5 Mr. Herman flies?

6 A. IFM reimbursed Mike \$25,000 for the trips
7 that he took to go look at the machine while we made
8 a decision to purchase it.

9 * * *

10 (MO Deposition Exhibit 12 was marked for
11 identification.)

12 * * *

13 MS. DIVITTORE: Shoot, can I retract that
14 a minute?

15 We are on the record. David, the
16 majority of the production from Michael Herman was
17 marked attorneys' eyes only, but I was able to
18 largely use IFM documents that were not.

19 MR. BERARDINELLI: Sure.

20 MS. DIVITTORE: I just realized the next
21 exhibit that was --

22 MR. BERARDINELLI: Let me see it then.
23 I'm probably not going to have a strong preference.
24 The protective order lets them be here.

25 MS. DIVITTORE: I handed it to Mr. Ortiz

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1 without realizing it.

2 MR. BERARDINELLI: Yeah, this is fine.

3 MS. DIVITTORE: Actually, this one says
4 confidential.

5 MR. BERARDINELLI: That's why it's fine.

6 MS. DIVITTORE: Thank you.

7 Sorry about that.

8 MR. BERARDINELLI: That's 11?

9 MS. DIVITTORE: It's 12.

10 Q. Mr. Ortiz, I'll represent to you that
11 this was a document produced by Mr. Herman in the
12 discovery in this case. It's an e-mail from Michael
13 Herman to Susan Bender at NAC but it's talking about
14 you. It's dated January 5, 2017. Subject: Manny.
15 "He's going to call you to discuss documentation
16 needed for IF Mail for my expenses thus far."

17 Is that correct?

18 A. Correct.

19 Q. The second paragraph said, "He is also
20 sending you a check for \$25,000 for the above."

21 A. Uh-huh. Correct.

22 Q. And do you know why the expenses that Mr.
23 Herman incurred would be -- the money would be
24 forwarded to the Hoover Foundation?

25 A. I have no idea.

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1 Q. You had no discussions with him about
2 that?

3 A. All I agreed to do was reimburse him for
4 the expenses. What he did with his money is his
5 business.

6 Q. So as IFM is operating beginning in late
7 2016 into 2017, when IFM needed money for its
8 expenses, what was the process?

9 A. I'd call Doug or e-mail Doug.

10 Q. Isn't it true that most of the time that
11 you were requesting funds you would e-mail Mr.
12 Herman?

13 A. I'd let Mike know we were doing that
14 because Doug also represented Mike. So as far as I
15 was concerned, it was a courtesy to keep him
16 informed.

17 Q. So it's your position you would e-mail
18 Attorney Holthaus directly requesting funding?

19 A. Correct.

20 MS. DIVITTORE: Again, counsel, I would
21 ask for a redacted e-mail to demonstrate that those
22 correspondence occurred because I don't believe any
23 were produced.

24 MR. BORDEN: Okay. We'll certainly
25 consider that.

1 Q. At some point in 2017 you requested money
2 from Mr. Herman; is that right?

3 A. Are you referring to the \$15,000 loan?

4 Q. I'm asking you.

5 A. That's the only one that I can think of.

6 Q. Tell me about this \$15,000 loan.

7 A. I didn't have time to get a hold of Doug
8 and I needed to make payroll and Mike advanced us 15
9 grand, and I believe we reimbursed him.

10 MS. DIVITTORE: Show you what was marked
11 as Exhibit 13. And again, David, this is a
12 confidential from your production. Is that right?

13 MR. BERARDINELLI: Okay. Confidential is
14 fair play. They're allowed to see it, just not
15 disclose it to third parties.

16 Q. Show you what we've marked as Exhibit 13,
17 and represent that it's a document produced by Mr.
18 Herman again in discovery in this case.

19 * * *

20 (MO Deposition Exhibit 13 was marked for
21 identification.)

22 * * *

23 Q. Do you recognize that as a May 1, 2017,
24 e-mail from Mr. Herman to Susan Bender, subject IFM?

25 A. I do.

1 Q. It says, "Mike, I will take you up on
2 your offer to have Sue wire us some cash. Can you
3 have her send \$15,000 to cover printer and payroll."

4 A. Correct.

5 Q. And this is the loan to which you were
6 referring?

7 A. Correct.

8 Q. Are there any written loan documents?

9 A. None.

10 Q. And do you know where the money came
11 from?

12 A. No. Sue wired us the \$15,000.

13 Q. Why is Sue involved at this point?

14 A. Because Mike got her involved.

15 Q. And so you don't know whether this money
16 came from Mr. Herman, personally, or Chiefeast, LLC?

17 A. I really don't.

18 * * *

19 (MO Deposition Exhibit 14 was marked for
20 identification.)

21 * * *

22 Q. Show you what we've marked as Exhibit 14
23 and, again, represent that this was a document
24 produced by North American this time in discovery in
25 this case.

1 A. (Witness reviewing.)

2 Q. Do you recognize this as wiring
3 instructions for a wire to the IF Mail account at
4 Bank of America?

5 A. That's what it appears.

6 Q. And would this be consistent with the
7 loan of \$15,000?

8 A. I would believe so.

9 Q. And the funds came from Chiefeast, LLC?

10 A. Okay.

11 Q. Is that correct?

12 A. That's what it says. I mean, I -- I just
13 got the money. I have no intent, no plans, no
14 knowledge about where Mike was sending us the money
15 from. This paperwork indicates Chiefeast, then I
16 assume it's correct.

17 Q. As the managing partner of IFM, were you
18 the one responsible for tracking the funds?

19 A. No.

20 Q. Who was?

21 A. My daughter-in-law let me know the money
22 was in the account.

23 Q. But you were the one that would request
24 the money?

25 A. I requested the funds but I wasn't

1 tracking the Bank of America account to know the
2 moment that any funds arrived.

3 Q. Requests for money came from you, though.

4 A. Requests for money came from me.

5 Q. So you would have made the request for
6 the loan to Michael Herman.

7 A. The e-mail clearly indicates I asked Mike
8 for the 15 grand.

9 Q. But you weren't aware that it came from
10 Chiefeast?

11 A. Not at all.

12 MR. BERARDINELLI: Manny, let her finish
13 her question before you start to answer.

14 THE WITNESS: I think I've answered it
15 four times already, David.

16 MR. BERARDINELLI: But just -- I'm only
17 asking for the benefit of the court reporter.
18 You're starting to talk over her a little bit and
19 that's difficult for the court reporter to do her
20 job.

21 Q. Did IFM repay Mr. Herman and/or
22 Chiefeast, LLC?

23 A. I believe so.

24 Q. When was the repayment?

25 A. I don't recall when.

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1 Q. How would it have been repaid?

2 A. I believe we would have given Mike the 15
3 grand.

4 Q. Via wire or check?

5 A. Probably wire.

6 Q. IFM would have record of that?

7 A. I would hope so.

8 MS. DIVITTORE: Again, I'd make a
9 request -- I'll include in my written -- for any
10 documentation concerning repayment of the \$15,000
11 loan.

12 * * *

13 (MO Deposition Exhibit 15 was marked for
14 identification.)

15 * * *

16 MR. BERARDINELLI: Give us a second,
17 Stephanie.

18 MS. DIVITTORE: Sure.

19 MR. BERARDINELLI: Thank you.

20 Q. Mr. Ortiz, I'll show you what we've
21 marked as Exhibit 15. Do you recognize this as a
22 June 16th --

23 MR. BERARDINELLI: Stephanie, after this
24 document can we take a restroom break?

25 MS. DIVITTORE: Sure.

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1 Can I start my question over because I
2 have the date wrong.

3 Q. Do you recognize this as a May 24, 2017,
4 e-mail from you to Mr. Herman copying Stephanie
5 Ortiz?

6 A. I do.

7 Q. And can you explain?

8 A. This is --

9 MR. BORDEN: Wait. Explain what?

10 Q. Can you explain this e-mail and the
11 purpose of it?

12 A. I believe this is like any other e-mail
13 that I copied Mike on, letting him know that we were
14 going to look for funds.

15 Q. And you're looking for \$50,000?

16 A. Yeah. I'm sure that this 50,000 probably
17 coincides with one of those dates that you read off
18 to me that came from Doug Holthaus arranging the
19 funding through Sofitel.

20 Q. But this is a request from you to Mr.
21 Herman --

22 A. It's -- it's just an e-mail that I wrote.

23 Q. Please let me finish my question.

24 A. Knock yourself out.

25 Q. This is a request from you to Mr. Herman

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1 that specifically says you should send \$50,000.

2 A. That's your interpretation.

3 Q. Mr. Ortiz, my question is this is a
4 request from you directly to Mr. Herman that says,
5 "You should send \$50,000."

6 Correct?

7 MR. BERARDINELLI: Objection; the
8 document speaks for itself.

9 A. He just objected.

10 MR. BERARDINELLI: You can answer.

11 MR. BORDEN: You should go ahead and
12 answer. She's just asking if that's what the -- if
13 that's how the e-mail reads.

14 A. My interpretation is me keeping Mike
15 informed of what we were doing. That's all I have
16 to answer on that.

17 Q. My question, Mr. Ortiz, if you could
18 please read it back, is a yes or no question.

19 * * *

20 (Whereupon, reporter read pending question.)

21 * * *

22 MR. BERARDINELLI: Same objection.

23 A. Asked and answered.

24 MS. DIVITTORE: Counsel, I'd ask that
25 your client be directed to answer the yes or no

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1 question.

2 MR. BORDEN: Okay. The only question is,
3 is that how it reads?

4 THE WITNESS: It's a matter of
5 interpretation, Ed.

6 MR. BORDEN: All right. That's his
7 answer. It's a matter of interpretation.

8 MS. DIVITTORE: That is not an acceptable
9 answer.

10 Q. My question is: Does this -- I'll again
11 ask, yes or no, is that what this document states?

12 MR. BERARDINELLI: Same objection.

13 A. Same answer.

14 MR. BORDEN: And he's answered that. You
15 may not like the answer but...

16 MS. DIVITTORE: Because it's not an
17 answer.

18 MR. BERARDINELLI: Can we take a restroom
19 break for Mr. Herman, please.

20 MS. DIVITTORE: Sure.

21 * * *

22 (Whereupon, a brief recess was taken.)

23 * * *

24 (MO Deposition Exhibit 16 was marked for
25 identification.)

1 * * *

2 BY MS. DIVITTORE:

3 Q. Mr. Ortiz, the last document I asked
4 about was funding information from May of 2017. I'd
5 like to jump back to February of 2017. I'll show
6 you an exhibit we've marked as M016.

7 MR. BERARDINELLI: Give me a minute,
8 Stephanie.

9 MS. DIVITTORE: Sure.

10 THE WITNESS: (Witness reviewing.)

11 MS. DIVITTORE: And just for the record,
12 I'll note that this was a document in IFM's
13 production, but the note on the bottom right-hand
14 corner, my client was reviewing the documents and I
15 didn't have a chance to remove it.

16 MR. BERARDINELLI: Okay.

17 Q. Mr. Ortiz, do you recognize this as a
18 February 13, 2017, e-mail from you to Mr. Herman
19 forwarding a January 3, 2017, e-mail from you to Mr.
20 Herman and Attorney Holthaus?

21 A. Correct.

22 Q. And you are providing Mr. Herman and
23 Attorney Holthaus bank account information for IFM?

24 A. Correct.

25 Q. And the routing numbers that have been

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1 redacted for a domestic account; is that right?

2 A. Correct.

3 Q. It also includes an international swift
4 code for foreign wires in U.S. funds. Do you see
5 that?

6 A. I do.

7 Q. Do you know what that is?

8 MR. BORDEN: Objection. What or just
9 what -- what is -- what a swift code is?

10 MS. DIVITTORE: I'd ask counsel refrain
11 from speaking objections, but if you object to the
12 form, my question is, you wrote to Mr. Herman and
13 Attorney Holthaus "international swift code for
14 foreign wires in U.S. funds."

15 Q. Do you know what an international swift
16 code for foreign wires in U.S. funds is?

17 A. No.

18 Q. But you provided it to Attorney Holthaus
19 and Mr. Herman?

20 A. Yes.

21 Q. Do you know whether any foreign wires
22 were ever issued to IFM?

23 A. My assumption is that the Sofitel monies,
24 okay, could have been a source of the international
25 funds.

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1 Q. Do you know whether there were funds
2 issued from a Sofitel account other than the U.S.
3 Bank account you testified to earlier?

4 A. None. That's -- like I said, it's an
5 assumption on my part.

6 Q. Do you know whether you specifically
7 required or requested, excuse me, the international
8 swift code for foreign wires?

9 A. No. I believe that's probably a response
10 to something that Doug had probably asked us to
11 include.

12 Q. Okay.

13 * * *

14 (MO Deposition Exhibit 17 was marked for
15 identification.)

16 * * *

17 Q. Now -- show you what we've marked as
18 Exhibit 17.

19 MS. DIVITTORE: David, are we okay to go?

20 MR. BERARDINELLI: Yeah. Thank you.

21 Q. Do you recognize Exhibit 17 as an e-mail
22 from you to Mike Herman concerning the financial
23 situation of IFM?

24 A. I do.

25 Q. And it's dated June 23, 2017?

1 A. Correct.

2 Q. And it says we're around 40,000 short,
3 thus we need about \$50,000 to be safe; is that
4 correct?

5 A. Correct.

6 Q. And again, this was to Mr. Herman, not
7 Attorney Holthaus?

8 A. Correct.

9 Q. Are you familiar with a company Capital
10 Mailing Equipment?

11 A. I am.

12 Q. Can you tell us what Capital Mailing
13 Equipment is?

14 A. I believe they're a supplier of mailing
15 equipment.

16 Q. Mailing equipment like your machine?

17 A. No. Different machines. Not like our
18 machine.

19 Q. Anything like the inkjet you described?

20 A. Could be. They could sell inkjets, I
21 believe.

22 Q. Did you purchase anything from Capital
23 Equipment when you were operating IFM?

24 A. We might have. We purchased stuff.

25 Q. Show you what we've marked as Ortiz

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1 Exhibit 18.

2 * * *

3 (MO Deposition Exhibit 18 was marked for
4 identification.)

5 * * *

6 Q. Do you recognize --

7 MS. DIVITTORE: David, are we all right?

8 MR. BERARDINELLI: Yeah, give me one
9 second. Sorry.

10 Thank you.

11 Q. Mr. Ortiz, do you recognize this as a
12 September 1, 2017, e-mail chain between you and Mr.
13 Herman?

14 A. Yes.

15 MR. BERARDINELLI: Object to the form.

16 Q. Mr. Herman is telling you that he will be
17 sending you wire instructions to send \$50,000 to
18 Capital Mailing Equipment early next week.

19 MR. BERARDINELLI: Object to the form.

20 MR. BORDEN: Objection.

21 MR. BERARDINELLI: Do you want me to put
22 it on? I don't want to be accused of coaching him.
23 Because of the redaction, to me it looks like the
24 e-mail from Mike -- his header is typically that
25 Michael Herman with his phone number. So the bottom

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1 part, I don't know who that -- wrote that e-mail
2 given the redaction, which we probably could cure
3 the redaction and solve that.

4 MS. DIVITTORE: Well, I guess I'll ask a
5 few questions. And if that doesn't cure it, I'll
6 ask for --

7 MR. BERARDINELLI: Sure.

8 Q. Mr. Ortiz, would you have been telling
9 Mr. Herman that you'll send him wire instructions to
10 send \$50,000 to Capital Mailing Equipment?

11 A. It reads as such.

12 Q. Do you recall that?

13 A. I don't recall every e-mail. Okay. And
14 I don't even recall that we bought anything from
15 Capital Mailing.

16 Q. Did IFM, other than Stephanie Ortiz, have
17 a bookkeeper or accounting person?

18 A. Nope. No.

19 Q. Did IFM hire a third-party accountant?

20 A. No.

21 Q. Did IFM file tax returns for 2017?

22 A. Not yet.

23 Q. Did you receive funds from Sofitel that
24 were used for purposes other than IFM operations?

25 A. None. All for IFM operations.

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1 Q. Show you what we've marked as Exhibit 19.

2 * * *

3 (MO Deposition Exhibit 19 was marked for
4 identification.)

5 * * *

6 A. (Witness reviewing.)

7 MS. DIVITTORE: Okay.

8 MR. BERARDINELLI: Yeah, thank you.

9 Q. Mr. Ortiz, do you recognize this as an
10 e-mail from you to Mr. Herman forwarding an e-mail
11 from Stephanie Ortiz to you?

12 A. Correct.

13 Q. Dated -- your e-mail is dated
14 September 12, 2017. Miss Ortiz' e-mail is dated
15 September 11, 2017; is that right?

16 A. Correct.

17 Q. And Miss Ortiz is providing you
18 information concerning the current financial
19 situation at IFM.

20 A. Correct.

21 Q. And you then forward that and tell Mr.
22 Herman that you're going to ask Doug to wire
23 \$30,000?

24 A. Correct.

25 Q. And it says "unbound money will be in

E. Ortiz - by Ms. DiVittore

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1 bank by Friday"?

2 A. Correct.

3 Q. What is unbound money?

4 A. A customer. It was a customer. IFM no
5 longer there, and that was an AR payment.

6 Q. Your e-mail says this will cover payroll
7 through the end of the month.

8 A. Uh-huh.

9 Q. And then it says, "I would like to take"
10 10,000 -- excuse me -- "10K to cover stuff at
11 house."

12 A. Correct.

13 Q. And that's \$10,000?

14 A. Correct.

15 Q. What did you mean by "to cover stuff at
16 house"?

17 A. Because I didn't take a salary from IFM,
18 so occasionally I got -- I got paid money.

19 Q. How would the money be paid to you?

20 A. A check. Wire.

21 Q. Would the money come from Sofitel
22 directly to you?

23 A. No. Came from an IFM account, Bank of
24 America.

25 Q. So Sofitel would provide the funds to

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1 IFM?

2 A. Uh-huh.

3 Q. Yes?

4 A. Correct. Yes.

5 Q. And then IFM would issue you either a
6 wire or check personally?

7 A. Correct.

8 Q. And Mr. Herman was aware that you would
9 take those funds for personal use?

10 MR. BERARDINELLI: Object to the form.

11 THE WITNESS: Excuse me?

12 MR. BERARDINELLI: I objected to the
13 form, but you can answer.

14 A. I'm assuming so.

15 Q. Do you know how many times IFM issued
16 money to you?

17 A. Probably in the course of '17, 30, 40
18 grand.

19 Q. Was it wired or via check?

20 A. Either way. I don't recall.

21 Q. I'm done with funding and would like to
22 talk about IFM operations. Back in the fall of 2016
23 when you're talking about forming IFM, you were
24 going to purchase the machine and then use the
25 machine in the direct mail business?

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1 A. Correct.

2 Q. And Mr. Herman was aware that that was
3 the plan?

4 A. Correct.

5 Q. And there was a contract with Fry
6 concerning the purchase --

7 A. It was a purchase agreement.

8 Q. And that was --

9 MR. BORDEN: I'm sorry, I think you
10 talked over each other a little bit there. So there
11 was a contract with Fry, a purchase agreement?

12 A. A purchase agreement.

13 Q. And you were able to negotiate that; is
14 that right?

15 A. Correct.

16 * * *

17 (MO Deposition Exhibit 20 was marked for
18 identification.)

19 * * *

20 Q. Show you what we've marked as Exhibit 20.
21 Do you recognize this as an e-mail from you to Mr.
22 Herman dated December 17, 2016?

23 A. I do.

24 Q. You're telling him, "There is lots of
25 problems with the agreement as written"; do you see

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1 that?

2 A. I do.

3 Q. Is that the agreement or the purchase
4 order with Fry?

5 A. No.

6 Q. What is this agreement?

7 A. Pat's employment agreement.

8 Q. Mr. Donahue?

9 A. Mr. Donahue.

10 Q. Okay. Can you tell me who drafted the
11 agreement?

12 A. Doug did.

13 Q. On behalf of IFM?

14 A. On behalf of IFM.

15 Q. What was wrong with the agreement as
16 drafted?

17 A. I don't recall the specifics of it at
18 this point.

19 Q. Was it ultimately revised and executed?

20 A. It was.

21 Q. What is SITMA, S-I-T-M-A?

22 A. The manufacturer of the machine.

23 Q. Did the machine come with any warranties?

24 A. None.

25 Q. At the time you were forming IFM in the

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1 fall, early January -- fall of 2016, early January
2 of 2017, were you talking to potential customers?

3 A. Give me those dates again, please.

4 Q. The end of 2016, beginning of 2017, when
5 you were forming the business.

6 A. I need further clarity on what you mean.
7 Are you referring to customers for the machine or
8 customers for IFM?

9 Q. Either.

10 A. Okay. There were customers for IFM that
11 we had conversations with about fulfillment
12 business. I don't recall any customers for the
13 machine because we didn't even have the machine up
14 and running.

15 Q. Without telling me names, how did you
16 identify potential customers for fulfillment?

17 MR. BERARDINELLI: I'm sorry. You keep
18 trailing off. I didn't get the question.

19 Q. Excluding the name, how did you go about
20 identifying customers for fulfillment?

21 MR. BERARDINELLI: Thank you.

22 A. Through leads. Making phone calls.

23 Q. Did you have contacts in that business at
24 that point?

25 A. Yes.

1 Q. Did Mr. Herman assist with contacts in
2 fulfillment?

3 A. None.

4 Q. What about Mr. Donahue?

5 A. One customer.

6 Q. And what was your plan to identify
7 potential customers for mailing?

8 A. We needed to get the machine to work
9 first before we would talk to any customers.

10 Q. So you never discussed the plan to
11 identify potential mailing customers?

12 A. We discussed being able to sell mailing
13 customers, but we were never ready to sell mailing
14 customers because we couldn't get the machine to
15 consistently work. That was January, April, July,
16 all the way straight through, till we actually took
17 it out of service because we could not get enough
18 support from SITMA, which is an Italian company, to
19 get the machine running consistently.

20 Q. But even before it was running you had
21 discussions with Mr. Herman about how you were going
22 to go about targeting customers for the mail
23 business, correct?

24 A. We had discussions about how we would
25 solicit business, and every discussion revolved

1 around my decision that we would not sell anything
2 until we had the capability of delivering a package
3 so we wouldn't fail with the customer.

4 Q. Did Mr. Herman agree to provide you with
5 his contacts in the direct mail business?

6 A. Mike had no contacts in the direct mail
7 business that were relevant, because Mike had been
8 retired 20-some years and there was no one that he
9 knew in today's world that would be relevant to
10 call; after being retired 20-some years.

11 Q. Isn't it true that the retirement
12 agreement and Mr. Herman's separation from North
13 American only occurred in 2013?

14 A. From my perspective, Mike has been
15 retired 20-some years, because he left active
16 participation at NAC many years before 2013.

17 Q. What do you mean by "he left active
18 participation in NAC many years before 2013"?

19 A. I think that speaks for itself. He
20 wasn't an active owner, participant, operator.

21 Q. And how do you know that?

22 A. Because I've known Mike for -- since
23 1994. And more importantly, his son and I have been
24 very close friends for many, many years. So his son
25 has made it clear to me that Mike had left way

1 before 2013.

2 Q. So it's your understanding that for
3 several years, at least prior to the 2013 retirement
4 agreement, Mr. Herman was not involved in the
5 day-to-day operations of NAC?

6 A. That's correct. That's my understanding.

7 Q. Do you know what involvement or function
8 he would have provided to NAC during that time
9 frame?

10 A. I don't know.

11 Q. I'll show you what we've marked as
12 Exhibit 21 and give you a minute to go through
13 there.

14 A. (Witness reviewing.)

15 MS. DIVITTORE: Can we go off to the
16 record for a minute?

17 * * *

18 (Whereupon, a brief recess was taken.)

19 * * *

20 MS. DIVITTORE: Counsel, what I handed
21 you that was marked as Exhibit 21 was the incorrect
22 document.

23 MR. BERARDINELLI: You're withdrawing
24 that one?

25 MS. DIVITTORE: We're withdrawing that

1 one.

2 MR. BORDEN: Want it back?

3 MS. DIVITTORE: No, you may have it. I
4 have enough paper. But we've remarked a
5 December 17, 2016, e-mail as Exhibit 21.

6 * * *

7 (MO Deposition Exhibit 21 was remarked for
8 identification.)

9 * * *

10 A. (Witness reviewing.)

11 BY MS. DIVITTORE:

12 Q. Mr. Ortiz, do you recognize that as a
13 December 17, 2016, e-mail exchange between you and
14 Mr. Herman copying Mr. Donahue?

15 A. Yes.

16 Q. And you're talking about the IFM machine;
17 is that right?

18 A. Correct.

19 Q. And the below e-mail from Michael Herman
20 says, you're planning on running around the clock
21 with your expected orders less maintenance time; is
22 that correct?

23 A. Correct.

24 Q. So your goal was to get this machine up
25 and running and work constantly except for

1 maintenance periods?

2 A. Correct.

3 Q. You told me that SITMA manufactured the
4 machine?

5 A. Uh-huh. Yes.

6 Q. But you bought it from Fry?

7 A. Correct.

8 Q. Was there any agreement with SITMA? How
9 did that work?

10 A. There wasn't any. That's what we were
11 trying to negotiate.

12 * * *

13 (MO Deposition Exhibit 22 was marked for
14 identification.)

15 * * *

16 Q. I'm going to show you what we've marked
17 as Exhibit 22.

18 A. (Witness reviewing.)

19 Q. The top portion of the first page is a
20 December 18, 2016, e-mail from you to Patrick
21 Donahue copying Mr. Herman; is that right?

22 A. Correct.

23 Q. And it appears that there are
24 attachments, although they weren't attached in the
25 IFM production. It talks about a sales

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1 representative agreement, an operating agreement for
2 IFM, SITMA insert or sale with redline changes,
3 detached bill of sale. Do you see that?

4 A. Correct. Yeah, I see it.

5 Q. With the sales representative agreement;
6 is that for Patrick Donahue?

7 A. Yes.

8 Q. What's the IFM operating agreement?

9 A. What a traditional operating agreement
10 is.

11 Q. So IFM actually had an operating
12 agreement?

13 A. I believe so.

14 Q. Is that a document that would have been
15 signed?

16 A. I can't recall if it was signed or not.

17 Q. Who would have drafted that?

18 A. Doug Holthaus.

19 Q. And you provided it to Mike Herman?

20 A. Provided it to Pat, copying Mike.

21 Q. Why would you be providing all of this to
22 Mr. Herman?

23 A. As I said, Mike was consulting and I was
24 keeping him informed.

25 Q. Was there any type of consulting

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1 agreement in place?

2 A. Nope. It was just a friendship
3 consulting agreement.

4 Q. So he did all this for free?

5 A. Absolutely. Mike has not been paid a
6 dime from IFM.

7 Q. Have you been paid other than the amounts
8 you've talked about --

9 A. I'd be paid today if it was --

10 MR. BORDEN: Just let her finish. Why
11 don't you finish your question.

12 Q. Other than the amounts you talked about,
13 approximately 30 to \$40,000.

14 A. That's it.

15 Q. Was your wife, as the owner, paid any
16 funds?

17 A. None.

18 Q. And you're also forwarding an e-mail from
19 Doug Holthaus to you, Mr. Herman and Patrick
20 Donahue; is that right?

21 A. I believe so.

22 Q. Michael Herman was not an IFM employee?

23 A. Not an IFM employee.

24 Q. Not an officer?

25 A. Not an officer.

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1 Q. But he's copied on --

2 A. He's copied on all these e-mails.

3 Q. Including e-mail from your counsel?

4 A. Including e-mail from my counsel.

5 Q. Who is Tatiana, T-A-T-I-A-N-A, Holthaus?

6 A. I believe that's Doug's daughter.

7 Q. Do you know why she is copied?

8 A. I -- no idea. Doug copied her.

9 Q. And the e-mail from Attorney Holthaus
10 says it includes a Delaware certificate of formation
11 of IF Mail. Do you see that?

12 A. It does. But as I stated earlier, we
13 never finalized a Delaware certificate for IFM.

14 Q. And your e-mail at the top to Patrick
15 copying Mike says, "We discussed being partners and
16 that is our intention."

17 who do you mean would be partners?

18 A. Pat.

19 Q. Not Mr. Herman?

20 A. No. Pat.

21 Q. Are you familiar with a company, DA
22 Marketing?

23 A. Don't understand the relevance of that.

24 MR. BERARDINELLI: I'm sorry, could I
25 have the last question back?

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1 MR. BORDEN: Okay.

2 BY MS. DIVITTORE:

3 Q. Mr. Ortiz, what's a pro forma?

4 A. It's a projected business plan.

5 Q. And did you and your team at IFM work on
6 a pro forma?

7 A. Yes, we did.

8 MR. BERARDINELLI: Object to the form.

9 Q. And is Exhibit 23 a January 4, 2017,
10 e-mail at the top from you to Michael Herman
11 concerning the IFM pro forma and business overview?

12 A. Uh-huh.

13 Q. And attached to that is the pro forma and
14 business plan; is that correct?

15 A. Correct.

16 Q. And who drafted the pro forma and
17 business plan?

18 A. I did.

19 Q. And your e-mail indicates that "Stephanie
20 is president of her business DA Marketing, which we
21 have closed. She will be handling all admin and
22 client stuff for us."

23 A. Correct.

24 Q. Then "the clients listed fall into two
25 buckets." Do you see that?

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1 A. Yes, they do.

2 Q. That's Sandvik, S-A-N-D-V-I-K?

3 A. Yep. Yes.

4 Q. FMC?

5 A. Yes.

6 Q. And these are two clients transferring
7 from DA Marketing.

8 A. DA Fulfillment. They were not mail
9 customers, they're fulfillment customers.

10 Q. But your e-mail says DA Marketing.

11 A. Yes, that was the name of the company.
12 But they did fulfillment work with DA Marketing
13 not --

14 Q. Did DA Marketing ever do any mail work?

15 A. Only one customer for --

16 MR. BORDEN: Just let her finish.

17 Q. Did DA Marketing ever do any mail work
18 for Sandvik or FMC?

19 A. None.

20 Q. And it says, "Production Solutions and
21 Image Mark are the two clients that Pat has quotes
22 with that he says we have work."

23 A. Correct. That's what it says.

24 Q. Is that correct? So as early as
25 January 4, 2017, you had quotes with Production

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1 Solutions and Image Mark?

2 A. Pat said we did.

3 Q. Okay. And that was for direct mail work,
4 correct?

5 A. That was for mail on the machine.

6 Q. And your last sentence, "Lastly, we need
7 to discuss PL as we need to develop cash flow model
8 that shows how Sofitel and we get cash."

9 Do you see that?

10 A. It does.

11 Q. What do you mean by PL?

12 A. Profit and loss.

13 Q. What do you mean by "develop cash flow
14 model that shows how Sofitel and we get cash"?

15 A. It refers to the arrangement that Doug
16 was negotiating or negotiated with Sofitel for us
17 for the royalty agreement.

18 Q. And did you at this point have an idea
19 of, provided you get the equipment working, what
20 portion of the business would be fulfillment and
21 what portion would be mail?

22 A. So -- I'm going to answer your question.
23 If you refer to the pro forma, it shows you that
24 Sandvik and FMC were 170 grand worth of business and
25 the rest was coming from so-called Pat.

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1 Q. Pat?

2 A. Patrick. Pat. That never materialized.

3 Q. But when you formed the business, you
4 anticipated based on --

5 A. On Pat's statement that he had these
6 opportunities that never materialized.

7 Q. Okay. And the pro forma indicates, like
8 you said, \$175,000 of revenue from fulfillment --

9 A. From fulfillment.

10 Q. -- correct? And then \$2,250,000 from
11 Production Solutions?

12 A. Correct.

13 Q. And \$1,300,000 from Image Mark.

14 A. Correct.

15 Q. And Production Solutions and Image Mark
16 were solely mail.

17 A. Solely mail.

18 Q. Are you familiar with a company EdgeMark?

19 A. I know the name and I know the company.

20 Q. Do you know what they do?

21 A. I believe they're a marketing agency.

22 Q. Do you know whether they engage in any
23 direct mail services?

24 A. I believe they purchase direct mail
25 services from suppliers.

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1 Q. Were they identified as a potential mail
2 client for IFM?

3 A. Patrick identified them as one.

4 Q. At some point ANRO notified you that they
5 weren't going to work with you; is that right?

6 A. Correct.

7 Q. Do you know why?

8 A. ANRO had too many operating problems
9 internally to devote the resources needed to partner
10 with us.

11 Q. When did that -- when did the
12 negotiations with ANRO end?

13 A. Sometime in the first quarter of '17.

14 Q. So it was before the machine was even
15 running?

16 A. Absolutely.

17 Q. Do you know if there were quotes for work
18 from EdgeMark?

19 MR. BERARDINELLI: I'm sorry, what was
20 the question?

21 Q. Do you know if there were quotes for work
22 from EdgeMark?

23 MR. BERARDINELLI: Thank you.

24 A. There were no quotes from EdgeMark,
25 Production Solutions, or anyone else for the

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1 machine. Pat said there were, but they never were.

2 Q. Do you know if Patrick, on behalf of IFM,
3 contacted EdgeMark regarding potential work?

4 A. I believe he did.

5 Q. And that would have been mail work, not
6 fulfillment?

7 A. That would have been mail work.

8 Q. Do you know when he would have contacted
9 them?

10 A. Sometime in the -- early '17 is my guess.

11 Q. Are you familiar with a company Mutual of
12 Omaha?

13 A. I am.

14 Q. Were they identified as a potential mail
15 client for IFM?

16 A. They were.

17 Q. Did you have any involvement or
18 discussions with them?

19 A. I had discussions with Pat. I never
20 discussed anything with Mutual of Omaha directly.

21 Q. Do you know whether IFM quoted any jobs
22 for Mutual of Omaha?

23 A. IFM provided estimates, quotes, based on
24 theoretical concepts that Mutual of Omaha was
25 discussing with Pat.

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1 Q. And that was direct mail work again?

2 A. Direct mail work.

3 Q. Do you know the time period that Patrick
4 would have been talking to Mutual of Omaha?

5 A. Second half of '17.

6 Q. When Patrick -- when you agreed to bring
7 him on board and become a part of IFM, you testified
8 that he did the engineering and design for the
9 machine?

10 A. Correct.

11 Q. Did he have prior experience in the
12 direct mail business?

13 A. Pat has an extensive history in the
14 direct mail business.

15 Q. In addition to the technology, did you
16 think or were there representations that he had
17 contacts that would help you find direct mail
18 customers?

19 A. My perception at the time was Pat's 50
20 years in the business should have enabled him to
21 have been a successful salesperson.

22 Q. Is that why a portion of his compensation
23 was based on commission?

24 A. Correct.

25 Q. So if he landed a direct mail client,

1 he'd get some type of --

2 A. He had a commission plan.

3 * * *

4 (MO Deposition Exhibit 24 was marked for
5 identification.)

6 * * *

7 Q. Show you what we've marked as Exhibit 24.

8 A. (Witness reviewing.)

9 Q. Do you recognize this as an e-mail dated
10 March 8, 2017, from you to Mr. Herman?

11 A. I do.

12 Q. He's talking about Metaverse,
13 M-E-T-A-V-E-R-S-E.

14 A. Yes.

15 Q. And it looks like there was a PDF
16 attached that we don't have; is that right? Well,
17 strike that.

18 It looks like there is a PDF attached to that
19 e-mail, if you look at the subject line at the top.

20 A. Yeah. I agree.

21 Q. What is Metaverse?

22 A. An art company.

23 Q. And this was part of the documents that
24 your counsel forwarded as involved?

25 A. It was just part of the -- all the

1 e-mails that we supplied.

2 Q. Do you know who Stuart Rose is?

3 A. A broker for an investment banking
4 company that helps buy and sell companies.

5 Q. And were you approaching Metaverse for
6 work for IFM?

7 A. No. Metaverse was an art company, an
8 e-commerce art company.

9 Q. So what was their role?

10 A. We were looking to acquire the company.

11 Q. So the bottom e-mail from you to
12 Mr. Rose, "Here is proof of part of the funding."

13 A. Uh-huh.

14 Q. "We will provide additional proof of
15 funds from Brendon and banking source when needed."

16 So you're showing him potential funding
17 to acquire this company?

18 A. Correct.

19 Q. This letter is from her attorney who
20 handles the monies for Sofitel LMG.

21 A. Uh-huh -- correct.

22 Q. So you were providing correspondence from
23 Attorney Holthaus --

24 A. I believe so.

25 Q. -- indicating that he handles the money

1 for Sofitel?

2 A. Sofitel, yes.

3 Q. What is LMG?

4 A. That's Logan Marketing Group, that's my
5 e-mail.

6 Q. So Attorney Holthaus is also involved
7 with LMG?

8 A. Attorney Holthaus did no work for LMG
9 other than what's referred to in an e-mail about
10 acquiring a company.

11 Q. Did IFM, to your knowledge, Mr. Donahue
12 (sic), I suppose, identify Chubb as a potential mail
13 client?

14 A. I believe so. I mean, Pat had multiple
15 ideas of clients.

16 Q. Did the machine ever get up and running?

17 A. The machine ran two, three, four days in
18 test periods and would break down consistently.

19 Q. Did you successfully obtain any direct
20 mail clients?

21 A. Not a one.

22 Q. And would you agree that you became
23 concerned with the ability of the business to
24 survive?

25 A. Well, I was concerned with the ability of

1 our getting the machine to operate consistently so
2 that we would not fail with the customer.

3 Q. Were you operating the fulfillment
4 portion?

5 A. We were.

6 Q. Were you obtaining revenue from that?

7 A. A couple hundred thousand dollars a year.

8 Q. What did -- MJ Ortiz is your son; is that
9 right?

10 A. That's correct.

11 Q. What did MJ do for the business?

12 A. He ran the fulfillment business.

13 Q. And at some point IFM hired Michael R.
14 Herman?

15 A. Correct.

16 Q. And if I refer to him as Mikey, you'll
17 understand what I mean?

18 A. I do.

19 Q. And that's Mr. Herman, party in this
20 case, it's his son?

21 A. Correct.

22 Q. And how did hiring Mikey come about?

23 A. Mike called me and said he was having a
24 discussion with Mikey about joining the firm because
25 Mikey was unhappy at his current employment and Mike

1 wanted to give Mikey an opportunity.

2 Q. Did you talk to Mikey before he was
3 hired?

4 A. I did.

5 Q. About IFM?

6 A. About IFM.

7 Q. Do you recall approximately when?

8 A. Honestly, I don't remember the date. I
9 know it was before he actually started.

10 Q. And what did you talk to him about?

11 A. About what his opportunity was at IFM.

12 Q. Because at this point you thought you'd
13 get the machine running and do well?

14 A. We thought that we'd get the machine
15 running and we thought that Mikey could help
16 facilitate that.

17 Q. And you also had employees, David Stubee,
18 S-T-U-B-E-E.

19 A. Correct.

20 Q. What did David do?

21 A. Fulfillment work.

22 Q. Evan Liss, L-I-S-S?

23 A. Fulfillment work.

24 Q. And Jason Jaffre, J-A-F-F-R-E?

25 A. Mechanic.

1 Q. For the direct mail side?

2 A. For the machine. To get the machine
3 running.

4 MR. BERARDINELLI: Spell the last one,
5 Stephanie, I'm sorry.

6 MS. DIVITTORE: J-A-F-F-R-E.

7 MR. BERARDINELLI: Thank you.

8 Q. And by fall of 2017 is it fair to say you
9 were very unhappy with Mr. Donahue and the mail
10 business?

11 A. That's an understatement.

12 Q. Show you what we've marked as Exhibit 25.

13 * * *

14 (MO Deposition Exhibit 25 was marked for
15 identification.)

16 * * *

17 A. (Witness reviewing.)

18 Q. Do you recognize that as an October 18,
19 2017, e-mail from you to Mr. Herman?

20 A. I do.

21 Q. And it lists your concerns with Mr.
22 Donahue?

23 A. It does.

24 Q. And without reading the document, can you
25 tell us what were your concerns at that point?

1 A. without reading the document and without
2 being sarcastic about it, pretty much what it says
3 in the document. I thought that Pat was just
4 useless.

5 Q. And at some point you terminated him?

6 A. We did.

7 Q. Do you recall approximately when that
8 was?

9 A. May or June of this year.

10 Q. IFM continued to operate until what --
11 when?

12 A. IFM has been in business, okay, doing the
13 fulfillment work and doing no mail business all
14 along.

15 Q. So IFM is still operating?

16 A. No. It's not operating as an entity,
17 okay, but it was in business. It was basically a
18 shuttered entity, that has not been closed down with
19 the state. If that's what you're referring to, or
20 anything like that.

21 Q. When did it stop doing fulfillment work?

22 A. IFM stopped generating any revenues March
23 or April of this year.

24 Q. Were all -- all of the employees were let
25 go?

1 A. Some of them were transferred to our
2 other business.

3 Q. Which one?

4 A. Our other business.

5 Q. Which business?

6 A. The Logan Marketing Group businesses.

7 Q. Does Logan Marketing Group itself operate
8 a business?

9 A. Logan Marketing Group is a holding
10 company that owns two other entities today.

11 Q. And which entities?

12 A. IBS and ClientLink.

13 Q. ClientLink is where we went for your
14 wife's deposition; is that right?

15 A. Correct.

16 Q. And ClientLink does mail or fulfillment
17 or --

18 A. Mostly fulfillment. A little mail.

19 Q. And IBS is located where?

20 A. King of Prussia.

21 Q. And does that company do both fulfillment
22 and mail?

23 A. Just does printing. It's a printing
24 company.

25 Q. So it doesn't do any direct mail

1 services?

2 A. It does -- prints products for the direct
3 mail business.

4 Q. So that would be like an ANRO to an IFM?

5 MR. BERARDINELLI: Object to the form.

6 MR. BORDEN: And I've given you a lot of
7 leeway but --

8 THE WITNESS: And I'm trying to --

9 MR. BORDEN: Yeah, I understand, and I
10 appreciate you are. But these two, what you've
11 asked about in the last few minutes, have nothing to
12 do with this lawsuit.

13 MS. DIVITTORE: He just testified that
14 all of the employees from IFM, which clearly has
15 something to do with the lawsuit, were transferred.
16 So I'm trying to understand --

17 A. They were terminated at IFM and hired at
18 ClientLink.

19 MR. BORDEN: Yeah, when IFM closed down.
20 But he's given you that testimony, but I don't think
21 we're prepared to have that go any further.

22 MS. DIVITTORE: Okay. And I'll just note
23 that we will likely raise it with the Judge, and if
24 we have to come back here, the same argument we had
25 with Marie Ortiz's deposition.

1 MR. BORDEN: Understood.

2 Q. And you're aware that you testified
3 earlier that Mr. Herman is involved or has some
4 involvement with a business that owns an airplane?

5 A. Mr. Herman owns an airplane.

6 Q. You've been on that?

7 A. I've been on the airplane.

8 Q. And I believe it was your testimony that
9 Mr. Herman did provide some services for what would
10 become IFM?

11 A. Correct.

12 Q. And the airplane.

13 A. And the airplane, yes.

14 Q. Can you tell me about that?

15 MR. BORDEN: Wait.

16 A. He flew us to --

17 MR. BORDEN: What's the -- I'm sorry, but
18 I don't understand the question. What is the
19 question?

20 I just ask you to rephrase it. Not
21 cutting you off, but I just ask you that we have a
22 clear question.

23 MS. DIVITTORE: Are you objecting to the
24 form but he could answer?

25 MR. BERARDINELLI: Can you read the

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1 question back?

2 * * *

3 (Whereupon, reporter read pending question.)

4 * * *

5 MR. BORDEN: I don't understand what you
6 mean.

7 MS. DIVITTORE: Tell me what Mr. Herman
8 and his airplane did for IFM. I mean, I'll object
9 to your objections because we've again --

10 MR. BORDEN: What the airplane did? Is
11 that really your question?

12 MS. DIVITTORE: Attorney Borden, I'm
13 going to ask that you stop. If you want to object
14 to the form, he can see whether or not he can answer
15 it, but your speaking objections simply aren't
16 acceptable.

17 MR. BORDEN: And I'm sorry, if a
18 question --

19 MS. DIVITTORE: I will withdraw the
20 question and start over, but object to the form is
21 all that we've stipulated to.

22 Q. Mr. Ortiz, you involved Michael Herman
23 and his airplane when you were working on starting
24 IFM, correct?

25 A. Correct.

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1 Q. Tell us about what Michael Herman and his
2 airplane did for you in forming IFM.

3 MR. BORDEN: Objection. Go ahead.

4 A. He flew us to Fry Communications to take
5 a look at the machine.

6 Q. Where is Fry located?

7 A. Mechanicsburg, or something like that, in
8 Pennsylvania.

9 Q. And do you recall how many trips there
10 were?

11 A. Twice.

12 Q. And this was before the business was
13 formed; is that right?

14 A. Correct.

15 Q. But you would agree to compensate him for
16 use of the airplane?

17 A. We agreed after the fact.

18 Q. There were no discussions before?

19 A. No.

20 Q. What were the terms of your agreement
21 about compensation for use of the plane?

22 A. There wasn't any formal agreement. I
23 know the plane costs a lot of money to fly, but it
24 was an issue of convenience so we covered the costs.

25 Q. The plane is typically kept in

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1 California; is that right?

2 A. You'll have to ask Michael where he keeps
3 it.

4 Q. When you went to visit Fry, where -- did
5 he pick you up?

6 A. He picked me up.

7 Q. Did anybody else go with you?

8 A. Pat.

9 Q. The three of you?

10 A. Yeah, the three of us.

11 Q. And where did he pick you up?

12 A. Trenton/Mercer.

13 Q. In New Jersey?

14 A. Uh-huh.

15 Q. And flew you to Mechanicsburg?

16 A. Yep.

17 Q. You looked at the machine?

18 A. Yep. Correct.

19 Q. And then he flew you back to New Jersey?

20 A. Correct.

21 Q. Second trip was the same?

22 A. Same thing.

23 Q. And you don't know where Mr. Herman
24 brought the plane from?

25 A. No, I don't.

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1 MR. BERARDINELLI: Could we take five
2 minutes, Stephanie?

3 MS. DIVITTORE: Sure.

4 * * *

5 (Whereupon, a brief recess was taken.)

6 * * *

7 (MO Deposition Exhibit 26 was marked for
8 identification.)

9 * * *

10 BY MS. DIVITTORE:

11 Q. I will show you, Mr. Ortiz, what we've
12 marked as Ortiz Exhibit 26.

13 A. Okay.

14 Q. Do you recognize this as a January 18,
15 2017, e-mail from Susan Bender to you at your Logan
16 Marketing Group e-mail address?

17 A. Yes, I do.

18 Q. And Ms. Bender is forwarding an invoice
19 for use of the airplane?

20 A. Correct.

21 Q. And she indicates that she removed the
22 consulting wording since it was just for expense
23 reimbursement. Do you know anything about that?

24 A. Yes.

25 Q. Can you tell us?

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1 A. The first one was written incorrectly
2 because it referred to as consulting when what we
3 were doing was covering Mike's expense of the
4 airplane.

5 Q. And if you look at the second page, was
6 that the invoice?

7 A. That was the total of the invoice.

8 Q. It was dated January 3rd of 2017?

9 A. I believe so.

10 Q. And it was Michael Herman at 3402 Gage,
11 G-A-G-E, Place, San Diego, California to Manny Ortiz
12 at IF Mail, LLC; is that correct?

13 A. That's correct.

14 Q. And the total amount of the invoice is
15 \$27,865.13?

16 A. Correct.

17 Q. And this indicates -- there appears that
18 there may have been three trips. Is it possible
19 that there were three trips?

20 A. It could have been.

21 Q. And this invoice was paid by IFM?

22 A. \$25,000.

23 Q. And that was with the funds from Sofitel?

24 A. Correct.

25 Q. Did IFM also pay expenses for the

1 airplane hangar; do you know?

2 A. Yes.

3 Q. Can you tell us about that?

4 A. IFM covered the hangar costs when Mike
5 needed a hangar cost in New Jersey.

6 Q. Was that for the -- strike that.

7 Private planes aren't my thing. So
8 would IFM -- when Mr. Herman would fly to New Jersey
9 to meet with you, he'd have to pay to have his plane
10 at the airport?

11 A. To hangar it at the airport.

12 Q. And is that just for the in and out when
13 he was picking up -- picking you up to go to Fry, or
14 was that other times when he would come to New
15 Jersey?

16 A. Whenever he came to Jersey.

17 Q. And was that a regular monthly expense,
18 or did they invoice for each time?

19 A. A monthly expense.

20 Q. Do you know how much it was?

21 A. \$3,500, 3,600, something like that.

22 Q. Was he coming to New Jersey solely to see
23 you?

24 A. Mike had business in New York, so when he
25 would come east, he would do both.

1 Q. Why did IFM agree to pay for the hangar
2 costs for --

3 A. Because IFM couldn't afford to continue
4 paying \$25,000 for the use of the plane, so it was
5 more economical for the company to pay 30-some
6 hundred dollars a month for a few months than to pay
7 the costs of utilizing that airplane.

8 Q. Were there other private flights?

9 A. We've used the plane other times.

10 Q. Other than Fry Communications?

11 A. Other than Fry Communications.

12 Q. Where did you go and when?

13 A. The dates -- I can't recall all of them,
14 but we've gone to Detroit, we've gone to Charlotte,
15 we've come here to Pittsburgh.

16 Q. Is that related to the IFM business?

17 A. All related to IFM business.

18 Q. So other than the \$25,000 that you paid
19 towards the invoice, the only other money to Mr.
20 Herman was -- strike that.

21 The only other money that was paid for
22 or on behalf of Mr. Herman or his business was
23 hangar reimbursement?

24 MR. BERARDINELLI: Object to form.

25 A. Hangar reimbursement.

1 Q. What about fuel or maintenance for the
2 airplane?

3 A. None. That's what the hangar deal was
4 about.

5 Q. And do you know how IFM paid those
6 expenses?

7 A. By check to the entity that owns the
8 hangar.

9 Q. And you said IFM stopped operating in
10 March or April of 2018?

11 A. Correct.

12 Q. Did it stop paying the hangar expenses at
13 that time?

14 A. No, the hangar expenses are still
15 covered.

16 Q. Is additional funding coming in to IFM?

17 A. Today, no.

18 Q. Since?

19 A. Not from Sofitel, no.

20 Q. IFM has other funding sources?

21 A. IFM has -- had, because it's been
22 transferred over -- had the two fulfillment
23 customers. One left. So it has one left.

24 Q. I thought you told me IFM was no longer
25 operating.

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1 A. It's not. It's moved into the Logan, the
2 client -- we terminated IFM, we moved the one
3 fulfillment customer into ClientLink.

4 Q. So how does IFM have money to pay the
5 hangar expenses?

6 MR. BERARDINELLI: Object to form.

7 THE WITNESS: Excuse me?

8 MR. BERARDINELLI: I objected to the
9 form, but you can answer.

10 A. There was money in the account and we've
11 paid it, and now -- eventually it's going to have to
12 be paid by one of the other entities if we continue
13 with this agreement.

14 Q. The agreement to pay the hangar expenses?

15 A. Correct.

16 Q. Is it in writing?

17 A. No.

18 Q. Do you know, is there a lease for the
19 hangar?

20 A. Honestly, I don't recall.

21 MS. DIVITTORE: David, I have two brief
22 areas of questioning; one concerns the recent
23 production that is attorneys' eyes only.

24 MR. BERARDINELLI: That's all right.

25 Are we up to 27?

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1 MS. DIVITTORE: We are. Can I just use
2 this for a minute? She missed a copy.

3 MR. BERARDINELLI: Do you want me to have
4 Marquee make one?

5 MS. DIVITTORE: Do you mind? I can ask
6 her.

7 MR. BERARDINELLI: Yeah.

8 * * *

9 (Whereupon, a brief recess was taken.)

10 * * *

11 (MO Deposition Exhibit 27 - Attorney's Eyes Only was
12 marked for identification.)

13 * * *

14 BY MS. DIVITTORE:

15 Q. I'll show you what we've marked MO
16 Exhibit 27. And for the record, this is marked
17 attorneys' eyes only.

18 A. That's -- kind of just reference I never
19 saw that before.

20 Q. That was my question. I'll represent
21 that Michael Herman's counsel provided this to us
22 Wednesday or Thursday of this week as a supplemental
23 document production. And my question to you is,
24 have you ever seen this or similar e-mail
25 correspondence by and among Tatiana Holthaus and

1 Doug Holthaus --

2 MR. BERARDINELLI: Object to the form.

3 MR. BORDEN: Object to the form.

4 Q. I wasn't done -- regarding a joint
5 venture agreement concerning IFM?

6 MR. BORDEN: Object to the form.

7 MR. BERARDINELLI: Object to the form.

8 A. So here's what I know. I've never seen
9 this before in my life. Okay?

10 Q. When did Attorney Holthaus pass away?

11 A. Can I ask for help here?

12 Q. If you recall. If you don't recall --

13 A. I think it was late '17.

14 Q. And you've indicated that you never saw
15 the MH777?

16 A. This document.

17 Q. But you did testify that there was going
18 to be some type of agreement between IFM and
19 Sofitel; is that right?

20 A. Correct.

21 Q. Did you ever see one?

22 A. No. I had conversations with Doug about
23 the nature of a royalty agreement that we could
24 enter into with Sofitel. I've -- this is the first
25 document concerning any kind of agreement, royalty

1 or otherwise, I've ever seen.

2 Q. Since Mr. -- or Attorney Holthaus's death
3 has his office or his assistant or his relatives
4 been in touch with you concerning the agreement or
5 relationship between IFM and Sofitel?

6 A. No.

7 Q. So as far as you're aware, there's no
8 obligation to repay any of the funds that Sofitel
9 advanced to IFM?

10 MR. BERARDINELLI: Object to the form.

11 A. I can't answer your question because
12 the -- the way you worded it.

13 Q. You indicated to me that the relationship
14 was a royalty agreement?

15 A. Correct.

16 Q. So if IFM made money, you would owe some
17 type of royalty to Sofitel.

18 A. Correct.

19 Q. Absent the royalty payments there was no
20 obligation to repay the money that Sofitel invested
21 in IFM.

22 A. I don't agree with that.

23 Q. I'm sorry?

24 A. I don't agree with that. My perception
25 is that IFM owes Sofitel for the money that Sofitel

1 advanced. What I'm unsure of is in what form it
2 will be done since the agreements were never
3 completed.

4 Q. How would IFM repay Sofitel?

5 A. Through running the technology in a
6 royalty agreement. The IFM machine will eventually
7 be run and then Sofitel will get paid. What's
8 unsure of is when and how the nature of that
9 agreement will be finalized.

10 Q. Where is the IFM machine now?

11 A. In the warehouse.

12 Q. Which warehouse?

13 A. In the ClientLink warehouse.

14 Q. Did ClientLink purchase the machine from
15 IFM?

16 A. No, it's just being stored there.

17 Q. But it's -- is it your intention to try
18 and get the machine functioning and continue to
19 operate as IFM?

20 A. My intention is to get the machine
21 functioning at some point, and that's not in the
22 near future. The machine is dismantled and in many,
23 many pieces. And it will take a significant effort
24 to put it back together and get it fixed correctly
25 so it will run.

1 Q. You don't have any intention to continue
2 operating as IFM; do you?

3 A. None whatsoever.

4 Q. So who's going to operate the machine if
5 you get it fixed?

6 A. ClientLink. It will purchase the
7 machine.

8 Q. Do you recall how much IFM paid for the
9 machine?

10 A. I do.

11 Q. How much was that?

12 A. \$35,000.

13 Q. Are you currently -- strike that.

14 As we sit here today -- strike that.

15 ClientLink is providing direct mail
16 services, correct?

17 A. ClientLink is providing direct mail
18 services in relation to its fulfillment business.
19 Some of the work requires some mail pieces to be
20 produced. It's not in the same category of direct
21 mail services as NAC is.

22 Q. Would you agree with me that based on
23 your relationship with Mr. Herman, your past
24 experience with NAC, relationship with Rob Herman,
25 that you're familiar with the direct mail business

1 agreement with Mr. Donahue. Do you recall that?

2 A. Yep. Yes.

3 Q. And I think you said something like this
4 is about Pat or only about Pat; what were you
5 referring to?

6 A. Where it says I apologize for the
7 document, the first version of the employment
8 agreement was not what we had talked to Pat about so
9 we had to get Doug to redo it.

10 Q. You use the term partners, plural, in
11 here several times. Maybe not officially on paper.
12 But who were the partners in your mind in IFM?

13 A. Partners at IFM, owned by Marie, Pat,
14 Mike, myself.

15 Q. And if IFM had been wildly successful,
16 would Mr. Herman have shared economically in that
17 success?

18 A. Absolutely.

19 Q. Exhibit 18 -- and we probably should pull
20 out 11, which are the bank records with it.

21 A. I have 18 here.

22 MR. BORDEN: Here's 11.

23 A. Okay.

24 Q. Have you had a chance to look over that,
25 Mr. Ortiz?

1 A. Yeah.

2 Q. In the top e-mail you write, "Yes, we can
3 account for it. We will have him wire us money."
4 who is him?

5 A. Doug.

6 Q. And then if we could turn to page 60 of
7 Exhibit 11 -- I'm sorry, not 60, bear with me one
8 second. Page 48 of Exhibit 11.

9 First of all, what's the date of the
10 e-mail string, or at least the top two in
11 Exhibit 18?

12 A. September 1st.

13 Q. And on Exhibit 11 page 48 is there a wire
14 transfer?

15 A. September 6th for 50 grand.

16 Q. And based on the "him" in this, that
17 would have been Doug wiring that money?

18 A. Correct.

19 Q. Page 17 -- or I'm sorry -- Exhibit 17,
20 what's the date on Exhibit 17, Mr. Ortiz?

21 A. June 23rd.

22 Q. And it's an e-mail between you and Mike?

23 A. Me and Mike.

24 Q. And I believe the insinuation was that
25 you were asking Mike personally for money; were you

1 asking Mike personally for money?

2 A. No, I was just referring to the money we
3 would be getting from Doug.

4 Q. Money from Sofitel?

5 A. From Sofitel.

6 Q. What's the date of this e-mail?

7 A. June 23rd.

8 Q. Turn to page 60 of Exhibit 11. Is there
9 a wire to IFM four days later for the \$50,000?

10 A. Well, this -- there's one here on
11 June 27th for 50 grand.

12 Q. Exhibit 15, May 24, 2017, e-mail between
13 you and Mr. Herman, right?

14 A. Uh-huh.

15 Q. Were you asking Mr. Herman personally for
16 money, or some other source?

17 A. No. Again, it's my communicating with
18 Mike about the kind of money we were going to get
19 from -- get Doug to send from Sofitel.

20 Q. And if you turn to page 66 of Exhibit 11,
21 the U.S. Bank records...

22 A. Yep.

23 Q. On May 26th is there a wire from the
24 Sofitel account to IFM?

25 A. 50,000.

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1 Q. Other than the 15,000 wire transfer
2 record we saw from one of Mr. Herman's accounts to
3 IFM, did he ever provide any money that you
4 understood to be personal funds to IFM?

5 A. None other than the 15 grand.

6 MR. BERARDINELLI: That's all I have.
7 Thanks, Mr. Ortiz.

8 MS. DIVITTORE: I have a couple
9 follow-up.

10 * * *

11 EXAMINATION

12 BY MS. DIVITTORE:

13 Q. You testified just now in response to
14 Mr. Berardinelli that when you're referring to
15 partners in the IFM business, you were referring to
16 yourself, Patrick Donahue, and Mike Herman; is that
17 correct?

18 A. Correct.

19 Q. What was the plan for the three of you to
20 share in profits as partners?

21 A. Pat had an employment agreement, as I've
22 stated. I think you have a copy of it here
23 somewhere. So that's self-explanatory. Mike and I
24 were going to split if there was any income, any
25 real income out of the company.

1 Q. How would you and -- how would Mr. Herman
2 split income if he was not an owner, officer or
3 employee?

4 A. Because of Mike's role as a consultant
5 that was unpaid, at some point the perception was if
6 we had any value in this business, he would get a
7 piece.

8 Q. So Patrick Donahue's partner reward or
9 reimbursement would be through his commissions?

10 A. Through his commissions.

11 Q. But then you and Mr. Herman would somehow
12 split profits?

13 A. Would split some profits, yes.

14 Q. Would this have been spelled out in the
15 operating agreement?

16 A. I'd have to review the operating
17 agreement to answer you in some form of affirmative.
18 So I don't recall.

19 Q. But you and Mr. Herman had a verbal
20 agreement to this arrangement?

21 A. We had an understanding.

22 Q. You testified, I believe, that IFM
23 reimbursed Mr. Herman \$25,000 of the 27,000 and some
24 change invoice for use of the airplane; is that
25 correct?

1 A. Correct.

2 Q. Is it possible that that money came from
3 Marie Ortiz and not IFM?

4 A. Not possible -- I don't think so.

5 MR. BERARDINELLI: I think you've
6 produced the check, Stephanie, in your production.

7 MS. DIVITTORE: Okay. Nothing further.

8 MR. BERARDINELLI: Thanks, Manny.

9 THE WITNESS: Oh, thank God.

10 (Signature not waived.)

11 (Whereupon, the above-entitled matter was
12 concluded at 12:03 p.m.)

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